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***LETTER REQUESTING COURT TAKE JUDICIAL NOTICE OF  
PART VII OF THE SEX DISCRIMINATION ACT 1975 (AS AMENDED), PART VII OF  
THE RACE RELATIONS ACT 1976 (AS AMENDED) AND SECTION 5(2) OF THE  
DEFAMATION ACT 1996 (AS AMENDED)***

February 4, 2011

**VIA ELECTRONIC FILING AND FAX (1-973-297-4906)**

Honorable Madeline Cox Arleo, United States Magistrate Judge  
United States District Court  
MARTIN LUTHER KING COURTHOUSE  
50 Walnut Street – Room 2060  
Newark, New Jersey 07101

Re: **Russell-Brown v. The University of Florida Board of Trustees et al., No. 10-cv-04017-SDW-MCA**

Dear Judge Arleo:

I represent Plaintiff Sherrie Russell-Brown in the above-referenced matter. Respectfully, I write to request that the Court take judicial notice of Part VII, ENFORCEMENT, “*Period within which proceedings to be brought*” of the Sex Discrimination Act 1975 (as amended) (Exhibit 1) and the Race Relations Act 1976 (as amended) (Exhibit 2), and section 5(2), “*Limitation of actions: England and Wales*,” of the Defamation Act 1996 (as amended) (Exhibit 3), according to the plain language of which, the Declaration of Philip John Hope Vaughan submitted in support of the University of Oxford Defendants’ motion to dismiss on the ground of forum non conveniens, is false. The alleged “potentially available” causes of action that Mr. Vaughan testifies Ms. Russell-Brown could bring in English courts, based upon the facts alleged in her First Amended Complaint (see Docket Entry No. 46-12 at ¶¶ 8-12), are legally **unavailable** to Ms. Russell-Brown, their respective statutes of limitations having already expired.

Pursuant to Fed.R.Civ.P. 44.1, federal courts may take judicial notice of foreign law. See, e.g., Sidali v. INS, 107 F.3d 191, 197 n.9 (3<sup>rd</sup> Cir. 1997); HFGL Ltd. v. Alex Lyon & Son Sales



Managers and Auctioneers, Inc., 264 F.R.D. 146, 148 (D.N.J. 2009); Charles Alan Wright & Arthur R. Miller, FEDERAL PRACTICE AND PROCEDURE, § 2444 “Proof of Foreign Law” (3d ed.). Rule 44.1 provides that, in deciding issues of foreign law, federal courts may consider any relevant material or source, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court’s determination shall be treated as a ruling on a question of law.

In her letter brief in opposition, Ms. Russell-Brown raised that, notably, Mr. Vaughan proffers no authority that her alleged “potentially available” causes of action under the Sex Discrimination Act 1975 (as amended), the Race Relations Act 1976 (as amended) and for defamation, survived England’s statute of limitations (see Docket Entry No. 58 at p. 4). If the statute of limitations has expired in the proposed alternative forum, the forum would not be available, and the University of Oxford Defendants’ motion to dismiss based on forum non conveniens would be inappropriate. See, e.g., D’Elia v. Grand Caribbean Co., Ltd., No. 09-cv-1707 (NLH)(KMW), 2010 WL 1372027, at \*7 (D.N.J. Mar. 30, 2010) (same); Bhatnagar v. Surrendra Overseas Ltd., 52 F.3d 1220, 1225 (3<sup>rd</sup> Cir. 1995) (stating that “a district court cannot dismiss on *forum non conveniens* grounds if that decision would render a plaintiff unable to pursue his or her action elsewhere”).

Here, as the University of Oxford Defendants are well aware, according to the plain language of sections 76(2)(a) and (2A)(b) of the Sex Discrimination Act 1975 (as amended) and sections 68(2)(a) and (3A)(b) of the Race Relations Act 1976 (as amended), their respective **9-month** statutes of limitations expired, at the very latest, on July 8, 2010 -- 9-months after the University of Oxford Defendants issued their October 8, 2009 “Completion of Procedures” letter to Ms. Russell-Brown (see Declaration of Timothy Endicott, Docket Entry No. 46-13 at ¶¶ 25-26). Likewise, according to the plain language of section 5(2) of the Defamation Act 1996 (as amended), its **1-year** statute of limitations for actions for defamation, expired at the end of 2010.

In closing, respectfully, Ms. Russell-Brown would also like to express some concern regarding the, apparently, false declarations submitted by the University of Oxford Defendants, in support of their motions to dismiss. For example, as explained in Ms. Russell-Brown’s November 9, 2010 letter to Your Honor (see Docket Entry No. 31 at p. 2), Exhibit B to Mr. Vaughan’s Declaration actually contradicts his testimony, that if this Court were to dismiss Ms. Russell-Brown’s action, on the ground of forum non conveniens, she “may immediately thereafter resume her [student] complaint” before the Office of Independent Adjudicator (“OIA”) (see Docket Entry No. 46-12 at ¶ 21). To the contrary, Exhibit B explicitly states that the OIA cannot “reconsider matters which have been subject to court proceedings” (see Docket Entry No. 46-12, Exhibit B, at p. 13). Further, with this letter, Ms. Russell-Brown has explained that, yet again, Mr. Vaughan’s Declaration is false and that the alleged “potentially available” causes of action that he testifies she could bring in English courts (see Docket Entry No. 46-12 at ¶¶ 8-12), are legally unavailable to her, their respective statutes of limitations having already expired.

Thank you for your consideration.

Respectfully submitted,

/s/ Lennox S. Hinds

LSH/sbt

## Attachments

cc: All Counsel of Record (via CM/ECF)

# EXHIBIT 1



*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Sex Discrimination Act 1975. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*



# Sex Discrimination Act 1975

## 1975 CHAPTER 65

### PART VII

#### ENFORCEMENT

##### *Period within which proceedings to be brought*

#### **76 Period within which proceedings to be brought.**

- (1) An [<sup>F1</sup>employment tribunal] shall not consider a complaint under section 63 unless it is presented to the tribunal before the end of [<sup>F2</sup>—
- (a) the period of three months beginning when the act complained of was done; or
  - (b) in a case to which section 85(9A) applies, the period of six months so beginning.]

- (2) A county court or a sheriff court shall not consider a claim under section 66 unless proceedings in respect of the claim are instituted before the end of
- \* [<sup>F3</sup>(a) the period of six months beginning when the act complained of was done; or
  - (b) in a case to which section 66(5) applies, the period of eight months so beginning.]

[<sup>F4</sup>(2A) Where in England and Wales—

- (a) proceedings or prospective proceedings under section 66 relate to the act or omission of a qualifying institution, and
- (b) the dispute concerned is referred as a complaint under the student complaints scheme before the end of the period of six months mentioned in subsection (2)(a),

\* the period allowed by subsection (2)(a) shall be extended by [<sup>F5</sup>three months.]

(2B) In subsection (2A)—

“qualifying institution” has the meaning given by section 11 of the Higher Education Act 2004;






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“the student complaints scheme” means a scheme for the review of qualifying complaints, as defined by section 12 of that Act, that is provided by the designated operator, as defined by section 13(5)(b) of that Act.]

[<sup>F6</sup>(2C) The period allowed by subsection (2)(a) or (b) shall be extended by three months in the case of a dispute which is referred for conciliation in pursuance of arrangements under section 27 of the Equality Act 2006 (unless the period is extended under subsection (2A)).]

[<sup>F7</sup>(3) <sup>F8</sup>.....]

(4) .....

(5) A court or tribunal may nevertheless consider any such [<sup>F9</sup>complaint or claim] which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(6) For the purposes of this section—

- (a) where the inclusion of any term in a contract renders the making of the contract an unlawful act that act shall be treated as extending throughout the duration of the contract, and
- (b) any act extending over a period shall be treated as done at the end of that period, and
- (c) a deliberate omission shall be treated as done when the person in question decided upon it,

and in the absence of evidence establishing the contrary a person shall be taken for the purposes of this section to decide upon an omission when he does an act inconsistent with doing the omitted act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.]

#### Annotations:

#### Amendments (Textual)

- F1** Words in s. 76(1)(3)(4) substituted (1.8.1998) by 1998 c. 8, s. 1; S.I. 1998/1658, art. 2, Sch. 1 (with art. 3)
- F2** Words and s. 76(1)(a)(b) substituted for words in s. 76(1) (1.10.1997) by 1996 c. 46, s. 21(6); S.I. 1997/2164, art. 2
- F3** Words substituted by Race Relations Act 1976 (c. 74), Sch. 4 para. 8(a)
- F4** S. 76(2A)(2B) inserted (1.11.2004) by Higher Education Act 2004 (c. 8), ss. 19(1), 52; S.I. 2004/2781, art. 3
- F5** Words in s. 76(2A) substituted (1.10.2007) by Equality Act 2006 (c. 3), ss. 40, 93, Sch. 3 para. 14(2) (with s. 92); S.I. 2007/2603, art. 2
- F6** S. 76(2C) inserted (1.10.2007) by Equality Act 2006 (c. 3), ss. 40, 93, Sch. 3 para. 14(3) (with s. 92); S.I. 2007/2603, art. 2 (subject to art. 3)
- F7** S. 76(3) substituted by Race Relations Act 1976 (c. 74), Sch. 4 para. 8(b)
- F8** S. 76(3)(4) repealed (1.10.2007) by Equality Act 2006 (c. 3), ss. 40, 91, 93, Sch. 3 para. 14(4), Sch. 4 (with s. 92); S.I. 2007/2603, art. 2 (subject to art. 3)
- F9** Words in s. 76(5) substituted (1.10.2007) by Equality Act 2006 (c. 3), ss. 40, 93, Sch. 3 para. 14(5) (with s. 92); S.I. 2007/2603, art. 2 (subject to art. 3)

# EXHIBIT 2



*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Race Relations Act 1976. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*



# Race Relations Act 1976

1976 CHAPTER 74

## PART VIII

### ENFORCEMENT

#### *Period within which proceedings to be brought*

#### **68 Period within which proceedings to be brought.**

- (1) An [<sup>F1</sup>employment tribunal] shall not consider a complaint under section 54 unless it is presented to the tribunal before the end of [<sup>F2</sup>—
- (a) the period of three months beginning when the act complained of was done; or
  - (b) in a case to which section 75(8) applies, the period of six months so beginning.]

- \* (2) [<sup>F3</sup>Subject to subsection (2A)] a county court or a sheriff court shall not consider a claim under section 57 unless proceedings in respect of the claim are instituted before the end of—
- (a) the period of six months beginning when the act complained of was done; <sup>F4</sup> . . .
  - (b) . . . . .

[<sup>F5</sup>(2A) In relation to an immigration claim within the meaning of section 57A, the period of six months mentioned in subsection (2)(a) begins on the expiry of the period during which, by virtue of section 57A(1)(a), no proceedings may be brought under section 57(1) in respect of the claim.]

(3) <sup>F6</sup> . . . . .

[<sup>F7</sup>(3A) Where in England and Wales—

- (a) proceedings or prospective proceedings by way of a claim under section 57 relate to the act or omission of a qualifying institution,
- (b) the dispute concerned is referred as a complaint under the student complaints scheme before the end of the period of six months mentioned in subsection (2), and



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(c) <sup>F8</sup> .....

\* the period allowed by subsection (2) for instituting proceedings in respect of the claim shall be extended by [<sup>F9</sup>three months.]

(3B) In subsection (3A)—

“qualifying institution” has the meaning given by section 11 of the Higher Education Act 2004;

“the student complaints scheme” means a scheme for the review of qualifying complaints, as defined by section 12 of that Act, that is provided by the designated operator, as defined by section 13(5)(b) of that Act.]

[<sup>F10</sup>(3C) The period allowed by subsection (2)(a) shall be extended by three months in the case of a dispute which is referred for conciliation in pursuance of arrangements under section 27 of the Equality Act 2006 (unless it is extended under subsection (3A)).]

(4) <sup>F11</sup> .....

(5) .....

(6) A court or tribunal may nevertheless consider any such [<sup>F12</sup>complaint or claim] which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(7) For the purposes of this section—

(a) when the inclusion of any term in a contract renders the making of the contract an unlawful act, that act shall be treated as extending throughout the duration of the contract; and

(b) any act extending over a period shall be treated as done at the end of that period; and

(c) a deliberate omission shall be treated as done when the person in question decided upon it;

and in the absence of evidence establishing the contrary a person shall be taken for the purposes of this section to decide upon an omission when he does an act inconsistent with doing the omitted act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.

#### Annotations:

#### Amendments (Textual)

- F1** Words in s. 68(1)(4)(5) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1
- F2** S. 68(1)(a)(b) substituted for words in s. 68(1) (1.10.1997) by 1996 c. 46, s. 23(4); S.I. 1997/2164, arts. 2, 3
- F3** Words s. 68(2) inserted (2.4.2001) by 2000 c. 34, s. 9(1), Sch. 2 para. 13 (with s. 10(5)); S.I. 2001/566, art. 2(1)
- F4** S. 68(2)(b) and the word “or” immediately preceding it repealed (2.4.2001) by 2000 c. 34, s. 9(2), Sch. 3 (with s. 10(5)); S.I. 2001/566, art. 2(1)
- F5** S. 68(2A) inserted (2.4.2001) by 2000 c. 34, s. 9(1), Sch. 2 para. 14 (with s. 10(5)); S.I. 2001/566, art. 2(1)
- F6** S. 68(3) repealed (1.10.2007) by Equality Act 2006 (c. 3), ss. 40, 91, 93, Sch. 3 para. 29(2), Sch. 4 (with s. 92); S.I. 2007/2603, art. 2 (subject to art. 3)
- F7** S. 68(3A)(3B) inserted (1.11.2004) by Higher Education Act 2004 (c. 8), s. 19(2); S.I. 2004/2781, art. 3

# EXHIBIT 3



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# Defamation Act 1996

## 1996 CHAPTER 31

### *Limitation*

#### **5 Limitation of actions: England and Wales.**

(1) The <sup>M1</sup>Limitation Act 1980 is amended as follows.

\* (2) For section 4A (time limit for action for libel or slander) substitute—

#### **“4A Time limit for actions for defamation or malicious falsehood.**

The time limit under section 2 of this Act shall not apply to an action for—

- (a) libel or slander, or
- (b) slander of title, slander of goods or other malicious falsehood,

but no such action shall be brought after the expiration of one year from the date on which the cause of action accrued.”.

(3) In section 28 (extension of limitation period in case of disability), for subsection (4A) substitute—

“(4A) If the action is one to which section 4A of this Act applies, subsection (1) above shall have effect—

- (a) in the case of an action for libel or slander, as if for the words from “at any time” to “occurred)” there were substituted the words “by him at any time before the expiration of one year from the date on which he ceased to be under a disability”; and
- (b) in the case of an action for slander of title, slander of goods or other malicious falsehood, as if for the words “six years” there were substituted the words “one year”.”.

(4) For section 32A substitute—